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Approved For Release 2004/03/17 : CIA-RDP85-00988R00600050075-0

MEMORANDUM FOR: Executive Officer, OGC
FROM : Chief, Legislation Division, OLC
SUBJECT : Draft OMB Circular on Employee Parking

1. This is in response to your request for comments on the Office of Management and Budget's draft Circular aimed at implementing the President's recently articulated determination to require Federal employees to pay for parking in order to encourage more energy efficient means of transportation.
2. In my view there are two possible approaches toward dealing with the draft Circular:
 - Do nothing on the assumption that the rental value of spaces at Headquarters will be determined to be less than \$10 per month and that, therefore, no fee will be charged; or
 - Submit comments which would, in effect, ask for an exemption for the Headquarters compound and other outlying facilities.
3. I do not believe we can assume that GSA (which is charged with determining charges) will assign a value of less than \$10 per month to the spaces at Headquarters. The draft Circular mentions the price of commercial "property" in the vicinity; this does not necessarily mean the price of commercial parking. The Circular, moreover, says that "the rate shall not be less than the sum of the fair rental value of such property as used in calculating Standard Level User Charges and any direct costs of parking facility management." I am not familiar with the "Standard Level User Charge," or with how it is calculated. I do think, however, that we also ought to bear in mind that an argument can be made that the isolation of the Headquarters compound and the lack of public transportation serving it make the spaces more valuable. So too with the lack of available commercial parking; if you drive to Headquarters you have no choice but to park in the Headquarters lot. This, it can be argued, makes the spaces in that lot more, not less, valuable.
4. I think that good arguments can be made for exempting the Headquarters compound and most of our outlying facilities from the proposed parking charges. Such arguments include the following:
 - Uniqueness of Agency mission and security requirements: Cover considerations prevent many employees from using either public transportation or carpooling with overt employees. The necessity of evening and weekend activity at our facilities precludes carpooling based on assumptions about uniform quitting times.
 - Isolation of the Headquarters compound: The paucity of public transport is well known. The same argument applies with regard to outlying facilities.

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5. It might be noted that two bills have been introduced on the Hill in connection with the parking issue. One of these (S. 871) would exempt from charges "parking at military bases or other isolated facilities where no nearby commercial parking exists." We are, it seems to me, somewhat like a military base here at Headquarters and at some of our other facilities.

6. Whether or not we have good arguments for exemption is one thing; whether we choose to use them is another. We must make an essentially political decision. Does the Agency want to put itself in the position of asking for an exemption from what is clearly a Presidential policy with respect to the rest of the Federal government? My own view is that we can support the principles behind the President's policy and take whatever steps we can to further encourage carpools, etc., while at the same time demonstrating that considerations unique to our mission and security/operational requirements should result in an exemption for the Headquarters compound and other outlying facilities.*

7. Different considerations apply with respect to our facilities which are closer to the Washington, D.C. "core." I recognize that inequities are certain to result from differences in charges assessed under the parking program, and these will be especially severe if the Headquarters compound is exempted. I would, however, caution against any attempt to spread the burden by "averaging" the cost of all Agency spaces (Headquarters and "core") and charging accordingly. To do so could open the Agency to accusations of attempting to undermine the President's program, the purpose of which is to discourage people from driving to work.

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*This would be consistent with our approach to a good deal of legislation that purports to deal with issues on a government-wide basis. We are often in the position of arguing that while a proposal has merit in the abstract its application to our Agency would impact adversely on our intelligence mission or on the DCI's responsibility to protect sources and methods. We could take the same kind of approach in the parking case.

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